

REMARKS

This patent application lien claims 1-44, all of which and rejected. On January 31, 2008, the applicants amended in declaration swearing behind the primary reference, Published US Patent Application No. 2005/0105508. The examiner has now all finally rejected all of the claims holding that the declaration does not present sufficient facts to establish conception of the invention. All rejections are respectfully traversed.

In the examiner offers no authority for the refusal to consider the declaration, other than to state that:

While conception is the mental part of the inventive act, and must be capable of proof, such as by them the demonstrative evidence or by a complete disclosure to another.

Even if it were assumed, for the purposes of argument, that the examiner has recited the correct standard for accepting the declaration, he has reached the wrong conclusion. Clearly, the invention disclosure was submitted by the inventor to another and, as shown below, was sufficient for the corporate reviewer and patent counsel to understand and conclude that a patent application should be filed.

Apparently, the examiner and does not understand the nature of the exhibits attached to the declaration. In paragraph 3 of the declaration, the inventor explains that he "submitted documentation to general accounts own for ITXC Corp. containing the details of the conception of my invention." The first four pages of the exhibit constitute a chain of e-mails demonstrating that the inventor submitted an invention disclosure form to the general counsel of ITXC Corp., Mr. Weitz, on October 15, 2003 requesting consideration of his invention. The remaining pages of the exhibit are a copy of that form.

In the e-mails, Mr. Weitz confirms receiving the disclosure. Subsequently, the inventor sense any mail asking Mr. Weitz if anything further is needed, and Mr. Weitz explains that he has sent to the disclosure to patent counsel. The any understand that the procedure afflicted by the e-mails is very common in industry, where forms they used to receive disclosures from inventors, evaluated, and sent on to patent counsel if applying for a patent is deemed warranted.

Furthermore, the examiner knows that the present patent application was actually filed in February 2004.

In the last response, it was demonstrated in detail that the relevant subject matter of the claims is, in fact, presented by the "Intervention Disclosure Form" that the inventor submitted. Clearly, it is the form used by the company, and the inventor answered the pertinent questions as he considered appropriate. It is unfortunate that the disclosure is not in a form and that the examiner would like, but it is a form that the company considered appropriate to use, and that should be of no consequence. Furthermore, the corporation counsel understood the disclosure well enough to realize that it should be sent to patent counsel for the preparation of a patent application, and patent counsel understood it well enough actually to prepare the application.

It is noted that the examiner is not objecting to the quality of the disclosure in the patent application, which would be appropriate, if it were somehow inadequate. He is objecting to the quality of the disclosure made by the inventor to the corporation and patent counsel! Moreover, it has been demonstrated that the claims in this application, in fact, incorporate the subject matter of the disclosure. Logically, how could the inventor not have conceived of the invention within the invention disclosure form?

If the examiner has legal authority for his approach for refusing to consider the declaration, he should cite it. As explained in the last response, for conception to be complete "the invention must be ready for patenting." In the present instance, both the corporate reviewer and patent counsel concluded, on the basis of the submitted invention disclosure, that the invention was ready for patenting. The as the examiner is rationale for refusing to consider the declaration flies in the face of how knowledgeable reviewer's view of the disclosure and ignores the fact that it actually resulted in a patent application.

It is respectfully submitted that the examiner should not substitute his judgment of the quality of the invention disclosure for the judgment of those who actually received and reviewed at that time and decided it disclosed an invention worthy of a patent application.

For the above reasons, it is requested that the examiner study the declaration and attached exhibits while carefully, reconsider is refusal to accept the declaration, and withdraw all current rejections, as they are based on a reference which does not qualify legally as prior art.

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Respectfully submitted,

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